IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4 OF 1996

State of Maharashtra) ... Appellant
(Orig. Complainant)

Versus

Shankar Krishna Parve,)
aged 67 yrs. Occ. Govt. Service,)
residing at Nehru Nagar, Kurla,)
Mumbai.) ... Respondent

Ms. M.M. Deshmukh, A.P.P. for the appellant.

Mr. Ganesh Gole for the respondent.

CORAM : SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 8TH AUGUST, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 22ND AUGUST, 2007.

JUDGEMENT:-

1. The State of Maharashtra has challenged in this appeal judgment and order dated 31/7/1995 & 1/8/1995 delivered by the Special Judge, Greater Bombay in Special Case No.34 of 1992

whereby the respondent-accused (for convenience, “the accused”) was acquitted of the offences under section 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, “the said Act”).

2. The prosecution story as disclosed by complainant PW-1 Mukund Sambhaji Londhe is as under :

The accused was serving as Sub-Inspector of Police in Greater Bombay Police Force. He was serving as Police Sub-Inspector at Trombay Police Station from February 1991 to 25/4/1992. Thus, he was a public servant within the meaning of section 2(c) of the said Act. PW-1 Mukund is the complainant in the case. He used to live at Kamawadi (Hirabag) hutment, Panjarpol, Din Quarry Road, dChembur, Bombay – 400 088. His hut was within the jurisdiction of Trombay Police Station. The open place admeasuring about 10' x 10' was about 50 meters away from his hut. His family comprising his father, mother, brother and sister live there along with him. He, therefore, found the said accommodation to be insufficient. He covered the open space near his hut with gunny bags so that his family could use that portion. The erection of the small hut on the said open space was

completed on 4/4/1992.

3. On 11/4/1992 at about 3.30 p.m., the complainant and his friends visited the newly constructed hut and they noticed that the roof of the hut was demolished. On enquiry being made, they learnt that one Vijaykumar Dhirajlal Vibhakar, who worked as a Painting Contractor and who lived in the said locality, had demolished it. Therefore, PW-1 Mukund and his three friends went to the hut of said Vijaykumar for questioning him.

4. On 12/4/1992, at about 9.30 p.m., when said Vijaykumar was passing on his motor cycle on Dinquari Road from near Dr. Parkhe Dispensary, PW-1 Mukund and his friends stopped him and questioned him about the demolition of the hut. PW-1 Mukund and his friends assaulted him and ran away. On the same day at about 7.30 p.m., they went to the hut of said Vijaykumar and apologized for the assault. PW-1 Mukund and his friends were afraid that said Vijaykumar might take revenge and assault them. Therefore, PW-1 Mukund and two of his friends Vikas Sable and Dilip Shirsat went to Solapur on the same night.

5. Vijaykumar lodged his complaint on 12/4/1992 at 7.30 p.m. agaisnt PW-1 Mukund and his three friends alleging that they had beaten him by means of bamboo sticks and cycle chain on 12/4/1992 at 9.30 a.m in the Panjrapol locality on Din Quarry Road. The accused, who was on duty at Trombay Police Station, registered the complaint. PW-1 Mukund came to know about the complaint lodged by said Vijaykumar. He also came to know that his associate Dayanand Bhadve was arrested in that case. Therefore, on 21/4/1992 PW-1 Mukund and his friends Dilip Shirsat and Vikas Sable left Solapur and came to Bombay on the next day morning at about 7.00 a.m.

6. After coming to Bombay, at about 8.30 a.m. they went to Trombay Police Station. They were arrested. On the next day, they were produced before the learned Magistrate. The court did not grant bail to the accused. They were remanded to the judicial custody till 6/5/1992. On 23/4/1992, PW-1 Mukund and his friends Dilip Shirsat and Vikas Sable engaged an advocate and through him filed an application for bail. On the same day, the bail was granted to them. At about 4.30 p.m., PW-5 Prakash Sonawane, a relative of Dilip Shirsat came to the Trombay Police Station along

with the bail order and handed it over to the accused. The accused did not release PW-1 Mukund and his friends. He demanded Rs.600/- as bribe from PW-5 Prakash Sonawane. Dilip Shirsat then called PW-5 Prakash Sonawane near the lockup and questioned him as to what was the hitch for their release.
PW-5 Prakash Sonawane told him that the accused had demanded Rs.600/- for their release and had threatened that in case the money was not paid, he would arrest PW-1 Mukund and his friends in another case.

7. At about 7.00 p.m. on the same day, the accused took PW-1 Mukund and his friends out of the lockup. They were asked to sit in the charge room. PW-1 Mukund requested him to release them. The accused again demanded Rs.600/-. PW-1 Mukund requested the accused that the amount may be reduced. The accused then reduced the amount to Rs.500/- and asked PW-1 Mukund to pay the amount on the next day i.e. on 24/4/1992 at 5.30 p.m. PW-1 Mukund and his friends were thus released after necessary formalities were complied with.

8. PW-1 Mukund could not arrange for the money and,

therefore, he went to Trombay Police Station. He met the accused at about 6.30 p.m. and told him that he could not arrange for the money. The accused was annoyed and warned him to bring the money on the next day between 8.00 p.m. and 9.00 p.m. PW-1 Mukund then left the Trombay Police Station.

9. On 25/4/1992 at 1.30 p.m. PW-1 Mukund went to ACB Office at Ballard Pier and met PW-7 PI A.S. Mahabadi, who recorded his complaint and registered an offence under section 7 of the said Act against the accused. On the basis of this complaint, the investigation was started. PW-7 PI Mahabadi arranged for two panchas. PW-3 Vishwanath Gholap is one of those two panchas. Pre-trap panchanama (Ex-22) was then carried out. In the said proceedings, PW-1 Mukund was directed to produce the articles on his person. He produced five GC notes of Rs.100/- denomination each. PW-7 PI Mahabadi called a police constable, who gave demonstration of the use and effect of Anthracene powder. The numbers of the notes were written in the pre-trap panchanama. The police constable applied Anthracene powder to the said notes. The said notes were then folded into a wad and the wad was placed in the left side chest pocket of the full shirt worn by

PW-1 Mukund. Thereafter, the constable left the place. PI Mahabadi instructed PW-1 Mukund to contact the accused and handover the marked currency notes only on demand as a bribe. Panch witness PW-3 Gholap was accompanying him. PW-1 Mukund was instructed to introduce panch witness PW-3 Gholap to the accused so that the panch witness would be able to remain present and hear the conversation. PW-1 Mukund was instructed to give a signal by folding his right hand sleeve of his shirt with his left hand after the accused accepted the amount of bribe. The members of the raiding party decided to remain present in the vicinity of the Trombay Police Station where the transaction was likely to take place. The proceedings of pre-trap panchanama commenced at 4.45 p.m. on 25/4/1992 and concluded at 5.45 p.m. on the same day.

10. After the pre-trap panchanama was over, PW-1 Mukund, the Investigating Officer and other members of the raiding party proceeded to Trombay Police Station in a police van. The police van reached near Vijay Hotel on Sion-Trombay Road, at about 7.50 p.m. PW-1 Mukund and panch witness PW-3 Gholap proceeded on foot to Trombay Police Station. The other members

of the raiding party followed them at a safe distance. At about 8.20 p.m., PW-1 Mukund and panch witness PW-3 Gholap entered the compound of Trombay Police Station. PW-7 PI Mahabadi and other members of the raiding party took their positions in the vicinity of the Trombay Police Station. After entering in the Police Station compound, PW-1 Mukund and panch witness PW-3 Gholap peeped in the charge-room through the door at their left and they noticed that the accused was standing in the open place in front of another door facing towards the lockup. Therefore, PW-1 Mukund and panch witness PW-3 Gholap went there. PW-1 Mukund made enquiries about his case. The accused gave the next date of the case and asked him whether he had brought the money. PW-1 Mukund told him that as directed by him, he had brought Rs.500/-. The accused then told him to give the money to him. After this conversation, PW-1 Mukund took out the wad of currency notes from the chest pocket of his full shirt with his right hand and extended it to the accused. The accused accepted the said wad in his right hand and kept it in the right side shirt pocket of his uniform and buttoned the same. PW-1 Mukund then came out of the police station and gave the pre determined signal. PW-7 PI Mahabadi and a constable rushed towards the charge-room and detained the

accused. An ultraviolet lamp was then brought. Ultraviolet rays were thrown on the hands and the clothes of the accused when bluish glow was seen on all the tips of the fingers and thumb of his right hand. Bluish glow was also seen on the pocket flap near the button of the right side chest pocket of the shirt of the accused. At the instance of PW-7 PI Mahabadi, the co-panch More unbuttoned the right side chest pocket and took out the wad of currency notes. Ultraviolet rays were then thrown on the notes, when bluish glow was seen on all the notes. The serial numbers of the said notes were compared with the serial numbers of the notes mentioned in the pre-trap panchanama and they tallied. The portion of the flap of the right side chest pocket of the shirt worn by the accused emitted bluish glow under ultraviolet rays. The mouth and the inner portions of the pocket of the shirt of the accused also emitted bluish glow. All these portions were encircled. The cash amount, the paper chit and the shirt on the person of the accused were seized under the post-trap panchanama. The post-trap panchanama was concluded at 11.15 p.m.

11. After completion of the investigation, the accused came to be charged as aforesaid.

12. In support of its case, the prosecution examined as many as seven witnesses. Apart from PW-1 Mukund the complainant, the prosecution, inter alia, examined PW-3 Vishwanath, the panch witness, PW-4 Arun Kulkarni, the Police Inspector attached to Trombay Police Station, PW-5 Prakash Sonawane, the brother-in-law of Dilip, who is the co-accused of the complainant and PW-7 Arvind Mahabadi, the Investigating Officer. The defence of the accused was one of denial. According to him, on the relevant night, he was mentally disturbed. PW-1 Mukund came to the police station and enquired about the next date of the case. After he told him the next date of the case, PW-1 forcibly thrust bribe money in his pocket. According to the accused, he took out the money and threw it on the ground. The ACB Officer showed that money as if it was recovered from his pocket and he was falsely implicated. According to the accused, because he did not help PW-1 Mukund to come out of the criminal case, which was registered against him, PW-1 Mukund involved him in a false case. The accused did not examine any defence witness.

13. After perusing the evidence on record, the learned Special

Judge was of the view that the prosecution had failed to prove its case beyond reasonable doubt. He, therefore, acquitted the accused of the charges levelled against him. The said judgment and order is challenged in this criminal appeal by the State of Maharashtra.

14. Ms. Deshmukh, the learned A.P.P. appearing for the State contended that the impugned judgment is perverse and deserves to be set aside. She submitted that the trial court has erred in not placing reliance on the testimony of PW-1 Mukund, the complainant. She submitted that the prosecution had successfully laid a trap. The bribe money was recovered from the pocket of the accused. The panch witness has supported the prosecution case. PW-5 Prakash Sonawane from whom the accused had demanded the money has also supported the prosecution case. The learned A.P.P. submitted that the trial court should have, therefore, accepted the prosecution story and convicted the accused. She urged that this court should overturn the impugned judgment of acquittal and convict the accused in accordance with law.

15. Mr. Gole, the learned counsel appearing for the accused on

the other hand, submitted that if the view taken by the trial court is a reasonably possible view, it should not be disturbed in an appeal against acquittal. In this connection, the learned counsel relied on the judgment of the Supreme Court in ***State of Rajasthan v. Raja Ram (2003) 8 SCC 180***. He submitted that PW-1 Mukund is an accused in a case registered against him at Trombay Police Station by the accused. The possibility of PW-1 Mukund involving the accused in a false case cannot be ruled out. He submitted that PW-5 Prakash is a relative of co-accused of PW-1 Mukund. His evidence also cannot be accepted at face value. Mr. Gole submitted that there are discrepancies in the evidence of the prosecution witnesses and it is unsafe to rely on the evidence of the Investigating Officer and convict the accused. He submitted that in the circumstances, no case is made out for interference with the impugned order and, therefore, the appeal be dismissed.

16. As stated by the Supreme Court in ***Raja Ram's case (supra)***, the order of acquittal should not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if two views are possible on the evidence adduced

in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. However, if the view taken by the trial court is a reasonably possible view, it should not be interfered with. In such a situation, it is not open for this court to substitute its own view in place of the trial court's view. It is, therefore, necessary to find out whether the trial court's judgment is perverse and deserves to be set aside. Needless to say that if the trial court's view is a reasonably possible view, this court will not interfere with it.

17. Though the character and antecedents of the complainant will not make him an unreliable witness, if there is clinching evidence, which bears out his case, while appreciating his evidence, his antecedents will have to be kept in mind, particularly when he tries to level allegations of corruption against a public servant. In this case, PW-1 Mukund has, in his evidence, stated that there was some dispute between him and one Vijay over the shed which he had constructed in the open space near his hut. He has admitted that he along with his friends had assaulted Vijay. According to

him, he had beaten up Vijay with a piece of wood. He has also stated that his friends Dilip and Vikas might be having cycle chain with them when all of them assaulted Vijay. He has further admitted that because of the said beating, Vijay was injured on his hands and legs. It is also pertinent to note that he has admitted that a number of cases have been filed against his friend Dilip at Trombay and RCF Police Stations and Deonar Police Station and Dilip may be facing cases filed by Nehru Nagar and Chembur Police Stations also. He has further admitted that Dilip was detained under the National Security Act. Therefore, PW-1 Mukund is certainly not moving in good company. While examining the evidence of PW-1 Mukund, the possibility of his falsely involving the accused at whose police station case is registered against him and his friends must be kept in mind. Besides, looking to his involvement in criminal activities, which he has admitted, his evidence cannot be accepted without corroboration because it is evident that he has no regard for law. False allegations and exaggerated account must be ruled out before conviction can be based on his testimony. Even if the trap is held to be proved it will have to be examined whether money was thrust on the accused to falsely involve him in the case. In case there is no corroboration to

the complainant's evidence, it must be seen whether the defence of the accused is probabalized.

18. It is pertinent to note that PW-1 Mukund has stated that after they beat up Vijay, they went to Solapur and when they came to know that the matter had been reported to the police, they came to Bombay on 22/4/1992. They were detained in the lock up of the Trombay Police Station where the accused was attached as Sub Inspector. They were not granted bail on that day. However, on the next day i.e. on 23/4/1992, they were granted bail by the court. According to PW-1 at about 4.30 p.m. on 23/4/1992, PW-5 Prakash Sonawane, the relative of Dilip came to the police station with the court order releasing them on bail. The accused was standing in the charge room which was exactly opposite the lock up where he and other accused were kept. He saw the accused taking bail order in his hand. His friend Dilip then called PW-5 Prakash Sonawane to the lock up and asked him as to why though there was bail order, the police were not releasing them. According to him, PW-5 Prakash Sonawane told Dilip that the accused is demanding Rs.600/- for their release. Since Prakash did not have that amount with him, he could not pay that amount. It is further

stated by PW-1 Mukund that on the same day at about 3.30 p.m. the accused took him and Dilip out of the lock up and told them that he needed Rs.600/-. He threatened that in case the money was not paid, he would arrest PW-1 Mukund and his friends in another case. According to PW-1 Mukund, he requested the accused that the amount may be reduced. The accused then reduced the amount to Rs.500/- and asked PW-1 Mukund to pay the amount on the next day i.e. on 24/4/1992. He was then released on bail by the accused. PW-1 Mukund has further stated that on the next day i.e. on 24/4/1992, he visited the Trombay Police Station and met the accused. The accused again asked him whether he has brought the money. When he told him that he has not brought the money, the accused got annoyed and warned him that he should bring the money on the next day. He then went to the ACB and lodged the complaint.

19. There are three stages of the prosecution story. According to PW-1 Mukund, the accused first demanded money on 23/4/1993 at 4.30 p.m. when PW-5 Prakash Sonawane came to the police station with the bail order. At that time, according to PW-1 Mukund, the accused demanded an amount of Rs.600/- from PW-5

Prakash Sonawane. PW-1 Mukund could see the accused demanding money because the accused and PW-5 were standing in the charge room which is opposite the lock up where he was kept along with the other accused. It is pertinent to note that while in the examination-in-chief PW-1 Mukund has stated that the accused was in the charge room when PW-5 Prakash Sonawane came there and he could see them from the lock up which was opposite the charge room, in his cross-examination, he has stated that PW-5 Prakash Sonawane was standing in the compound of the police station. He has further stated that he was neither in the police station building nor in the charge room. If PW-5 Prakash Sonawane had not entered the charge room, then the question of the accused making demand of money in the charge room and PW-1 Mukund and his friend witnessing it from the lock up does not arise.

20. It is also important to note that the station diary extracts (Ex-27 and Ex-28) reveal that on 23/4/1992, the accused was posted at Raj Kapur Chowk from 3.30 p.m to 5.30 p.m. to deal with some law and order problem. Therefore, at 4.30 p.m. he could not have been present at the police station to make demand of money. It is

also pertinent to note that while the complainant has stated that PW-5 Prakash Sonawane handed over the bail order to the accused and the accused demanded money, PW-5 Prakash Sonawane has stated that he handed over the bail order to one havaldar and the accused came later on at 7.00 p.m. Moreover, while PW-1 Mukund has stated that the accused had made a demand for money to him, PW-5 Prakash Sonawane has, at one stage, stated that the accused demanded money from Vikas but in the cross-examination, he has sought to correct this statement. He has stated in the cross-examination that the statement made by him that accused demanded money from Vikas is incorrect. It must also be borne in mind that PW-5 Prakash Sonawane is the brother of Dilip, the co-accused of the complainant. He is, therefore, an interested witnesses. In view of the discrepancies in his evidence, it is difficult to place reliance on his evidence. PW-1 Mukund has then alleged that on 23/4/1992 at 7.00 p.m. the accused took PW-1 Mukund and his friend out of the lock up and demanded Rs.600/- and settled the amount at Rs.500/-. For this demand, apart from the interested evidence of PW-1 Mukund, there is no other evidence. It is then contended by PW-1 Mukund that as he could not arrange for the money, on 24/4/1992, he went to Trombay

Police Station at 6.30 p.m. and met the accused and told him that he could not arrange for the money. According to him, the accused was then annoyed and asked him to come with money on the next day. For this demand also, apart from the interested evidence of PW-1 there is no other evidence on record. It is pertinent to note that PW-1 Mukund and his friends were already released on bail. It is, therefore, not understood why he would go to meet the accused at the police station on the next day. It is difficult to accept this story only on the basis of the evidence of PW-1 Mukund.

21. So far as the place where the bribe was allegedly paid is concerned, there is inconsistency in the prosecution case. According to PW-1, it was paid in the open space in front of the charge room while PW-3 Gholap has stated that it was paid inside the charge room. According to PW-3 Gholap, PW-1 Mukund introduced him to the accused as his maternal uncle. However, this fact is not mentioned in the post-trap panchanama. Even if the prosecution case that the money was found on the person of the accused is accepted, in view of the inconsistencies in the prosecution evidence and considering the fact that PW-1 Mukund and PW-5 Prakash Sonawane are interested witnesses and that

against PW-1 Mukund a case was registered at Trombay Police Station where the accused was attached, it is difficult to hold that the prosecution has proved its case beyond reasonable doubt that the accused demanded bribe and accepted it. The possibility of the complainant thrusting this money on the accused cannot be ruled out. The defence of the accused is probabalized. In my opinion, in such circumstances, the order of acquittal cannot be reversed because the view taken by the trial court is a reasonably possible view. Even if, on facts, some other view is possible, since the trial court's view is a reasonably possible view, it cannot be disturbed. The accused must get the benefit of doubt. The presumption of innocence of the accused is strengthened by the order of acquittal. In my opinion, therefore, the appeal deserves to be dismissed and is dismissed accordingly.

[SMT. RANJANA DESAI, J.]